

Hong (Migration) [2019] AATA 5416 (12 August 2019)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Seung Hwan Hong
CASE NUMBER:	1717854
HOME AFFAIRS REFERENCE(S):	BCC2016/986924
MEMBER:	Helena Claringbold
DATE:	12 August 2019
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 12 August 2019 at 2:00pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – genuine de facto partners – limited evidence of joint financial arrangements – inconsistent detail on financial aspects of their relationship – unclear evidence of previous addresses and co-tenants – decision under review affirmed

LEGISLATION

Migration Act 1958, ss 5, 65, 359

Migration Regulations 1994, Schedule 2, cls 820.211, 820.221; r 1.09

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. On 8 March 2016, Mr Seung Hwan Hong, the applicant, applied for a Partner (Temporary) (Class UK) visa. The application was based on his de facto relationship with Miss Bobae Jung, the sponsor.
2. On 8 August 2017, a delegate of the Minister for Immigration and Border Protection refused to grant the visa. The delegate was not satisfied that the visa applicant and the sponsor are genuine de facto partners. Therefore, the visa applicant did not meet subclause 820.211(2) (a) of Schedule 2 to the Migration Regulations 1994 (the Regulations) made under the *Migration Act 1958* (the Act). On 14 August 2018, the visa applicant provided the Tribunal with a copy of the delegate's decision record. This is a review of the delegate's decision.
3. On 13 May 2019, the applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor. The Tribunal hearing was conducted with the assistance of an interpreter in the Korean and English languages. The applicant was represented in relation to the review by his registered migration agent.
4. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
5. The parties provided significant inconsistent evidence to the Tribunal. They have not satisfied the Tribunal that they are credible.

CONSIDERATION OF CLAIMS AND EVIDENCE

6. The Tribunal has taken into consideration, individually and as a whole, all the evidence, in the Department of Border Protection's File (the Department's) case file and the Tribunal's case file and the evidence at the Tribunal hearing.

7. ISSUE

8. The issue in the present case is whether, the applicant and the sponsor are in a genuine and continuing de facto partner relationship, as defined in s.5CB of the *Migration Act 1958* (the Act).

BACKGROUND ON THE EVIDENCE

9. The applicant was born in 1994 in Seoul, Gyeonggi-do, South Korea. His parents and sister live in the South Korea and his brother lives in Australia. In April 2011, the applicant entered Australia as the holder of a student visa. He departed Australia on three occasions in the year of 2011. His third departure was in October 2011 to South Korea. After 15 months, in February 2013, he returned to Australia. He was granted a subsequent student visa in March 2013, which was cancelled in November 2014.
10. In December 2014, the applicant was granted a student visa, which was cancelled in September 2015. In September 2015, he entered Australia as the holder of a student visa which was valid until August 2018. In February 2018, the applicant entered into a lease arrangement for a retail property in Lidcombe, New South Wales, Australia. In April 2018, he commenced operating a café at the same location.

11. The sponsor was born in 1991 in South Korea. Her parents and brother live in South Korea. In August 2009, she entered Australia as the holder of a contributory parent visa. In November 2012, she departed Australia to Indonesia and returned in February 2013. In March 2014, the sponsor was granted Australian citizenship.

12. The parties met in August 2014, at the applicant's workplace, through a mutual friend. The parties commenced a relationship with one another in the same month. In October 2015, the parties claim to have committed to each other as de facto partners and the sponsor moved into the visa applicant's apartment. In April 2016, the parties registered their de facto relationship with the NSW Registry of Births, Deaths and Marriages.

13. Is the applicant the de facto partner of an eligible person?

14. The Tribunal is satisfied that the sponsor, at the time of visa application and decision, was an Australian citizen who had turned 18.

15. Are the parties in a de facto relationship?

16. 'De facto partner' is defined in s.5CB of the Act and provides that a person is in a de facto relationship with another person to whom they are not married, if they have a mutual commitment to a shared life to the exclusion of all others, the relationship is genuine and continuing, the couple live together, or do not live separately and apart on a permanent basis, and the couple are not related by family: s.5CB(2).

17. CLAIMS AND FINDINGS

18. In forming an opinion whether they are in a de facto relationship, consideration must be given to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other, as set out in r.1.09A(3) of the Regulations which is attached to this decision.

19. Regarding the financial aspects of the parties' relationship, there is no evidence that the parties have any joint ownership of assets. Other than lease agreements, insurance policies, and a joint bank account, the parties do not have any other joint liabilities nor have any legal obligations owed to the other party. At the time of application the applicant stated that he worked as a barista three to four days a week. He claimed that his parents supported the parties financially and they didn't need to worry about the financial aspects of their relationship. The applicant provided information including the following: a notice increasing the rent to \$680 weekly is addressed to the parties at the Rhodes address, a copy of page 2, of a joint Residential Residency Agreement, for the current Lidcombe address. This starts on 15 September 2018 and ends on 14 March 2019 and records a weekly rent of \$550, joint bank statements dated for periods of time in 2017, 2018, a receipt dated September 2018 for the purchase of a double bed is addressed to the applicant at the Lidcombe address, two other receipts for household purchases are addressed to the Lidcombe address. No evidence is provided about who paid for these items. Letters dated August 2018, confirmed that the visa applicant and sponsor's insurance policies are in place. They record the applicant as the sponsor's nominated beneficiary (non-binding) and vice versa. In February 2018, the visa applicant entered into a lease for a retail property in Lidcombe, New South Wales, Australia and provided a copy of a lease in the applicant's name with a commencement date of 14 February 2018 and a terminating date of 13 February 2023. The applicant told the Tribunal that he opened a café business in April 2018. He said that his parents financed the business in support of the parties' relationship. He said that both he and the sponsor work in the café and their income is derived from the café and sometimes his mother sends him money. He provided what appears to be the record of work hours for the sponsor and the applicant and other staff members at the café and bank statements from

April 2018 to 2019. The applicant and the sponsor provided inconsistent information about the financial aspects of their relationship and this is discussed below.

20. The Tribunal put information to the applicant under 359AA of the Act, as follows:

- The sponsor told the Tribunal the following: when the parties lived at the Rhodes address, the rent was either \$620 or \$630 a week and the other two other tenants paid \$200 to \$250 weekly in rent. She didn't pay rent but filled in the gaps as needed. When the parties lived at the first Lidcombe address, the rent was \$600 and she did not pay any rent. The rent on the current Lidcombe address is \$650 weekly which the applicant pays from the business account. This evidence was put to the applicant as it was inconsistent with his evidence that the rent at the Rhodes address was \$680 weekly and the other tenants paid \$170 weekly and the sponsor paid \$100 weekly. When the parties lived at the first Lidcombe address the rent was \$620 weekly and the sponsor paid \$100 weekly and when his sister worked she also paid \$100. The rent on the current Lidcombe address is \$550 weekly which the applicant pays from the business account.

21. The Tribunal put information to the applicant under s.359AA of the Act, as follows:

- The sponsor told the Tribunal that the applicant's parents funded the café business to an amount of \$100,000 and also set up 'filling' and the interior organising. Neither she nor the applicant put any money into the business. The parties work in the café business. However, because the business is only one year old the applicant does not take much salary home and his mother sends him money. She is not paid a salary and the applicant pays for everything. This evidence was put to the applicant as it was inconsistent with his evidence that his parents lent him \$200,000 for setting up the café business. Both he and the sponsor put \$2,000 each into the running expenses of the business. The parties have a combined weekly take home salary of \$1,300.

22. The Tribunal put information to the applicant under s.359AA of the Act, as follows:

- The sponsor told the Tribunal that the parties' joint bank account is used for paying the rent and for shopping. The business account is used for staff wages and living expenses and she has no idea about the account. The applicant has two other bank accounts but the sponsor has no idea of how much money is in the accounts. The applicant has a Korean bank account which was previously used when his mother transferred money but she now sends the money to the applicant's bank accounts in Australia. The sponsor has a personal bank account with a balance of \$2,000 or less than \$3,000. This evidence was put to the applicant as it was inconsistent with his evidence that the joint bank account is used to pay utility bills and he occasionally deposits \$50 pocket money for the sponsor. The business account is in his name and he is the only card holder. The account is used to pay the parties living expenses and has a balance of \$900 to \$1,000. When the business account was created there was not much use for the joint bank account as he uses the business card. The rent is paid either from the business account, the joint account or the applicant's personal account or by cash. He has a Korean bank account which is used for the purpose of his mother sending him money. The sponsor has a personal bank account with a balance of less than \$1,000.

23. In a post hearing submissions the applicant stated the following: although the parties discuss financial matters and make decisions about spending he is the person who manages financial matters. In 2017 his parents sent money for the purposes of opening the café. Because of the laws in Korea they were unable to send \$200,000 to one bank account and

sent it through various bank accounts and methods. Therefore, the sponsor didn't know how much money came to him or the bank account used for the money. Because the Tribunal kept asking about how much he was paid weekly he provided his answer and the joint bank account and individual bank accounts do not show any regular wage payments. This was an average amount and this is why the sponsor's response was different to his. He stated that many friends stayed with the parties from several weeks to a year and even though he handled the finances he does not have a clear recollection of how much each of them paid for their share of rent. In a post hearing submission the sponsor stated the following: the parties discuss all financial matters but the applicant handles them and because of this it was not easy for her to remember rent from some years ago. The applicant's brother stated that his parents invested in a café which is managed by the applicant and the sponsor who work full time at the café. The applicant takes care of financial matters for the café and living expenses for him, his sister and the sponsor.

24. The Tribunal accepts the following: that lease and bond documents have been issued in the parties' names for the current Lidcombe address and a bond document for the first Lidcombe address. The parties have insurance where they are each listed as a cross beneficiary and have a joint bank account. Rental and utility payments have been recorded as withdrawals from the joint bank account and deposits have been made into the joint bank account. Various withdrawals and deposits are recorded on the bank statements provided for the applicant's business account without explanation. Other withdrawals have hand written notations against them, such as internet bill, John Street, Korean Restaurant etc. On the applicant's evidence he is the person who manages the business account and on the parties' evidence he pays for everything. The parties provided inconsistent information about the financial aspects of their relationship, including the rent they each paid and who else contributed to the rental payments and how much they paid. They gave inconsistent information about the money the applicant's parents contributed to the café business and about their own contribution. This is perplexing when the parties claim that although the applicant manages financial matters, they discuss all financial matters together. This led the Tribunal to be concerned about the parties' credibility and not to be satisfied that they share day-to-day household expenses.
25. Regarding the parties' household, the parties have not provided any evidence that they have any joint responsibility for the care and support of children. The parties claim to have lived together at four residential addresses, a Sussex Street, Sydney address (the Sydney Address), a Walker Street, Rhodes address (the Rhodes address), a first John Street, Lidcombe address (the first Lidcombe address) and a current John Street, Lidcombe address (the current Lidcombe address). At the time of application, the applicant stated the following: the parties began living together between October and November 2015, when the sponsor moved in to live with the applicant at the Sydney address. In February 2016, they moved to the Rhodes address. Two pages of a residential tenancy lease document dated February 2016, has been provided for the Rhodes address. A letter dated 6 February 2016, congratulates the parties on renting the Rhodes address. A notice of rent increase dated February 2017, is addressed to the parties at the Rhodes address. There is also a copy of the front of an envelope from Fair Trade is addressed to the parties and a copy of a parcel post item addressed to the sponsor and images of clothes inside a wardrobe cupboard and two desks.
26. Other information provided by the applicant includes the following: a copy of a NSW Government Fair Trading, Advice of Lodgement, dated October 2017. This recorded bond lodgement lists for the parties as tenants at the first Lidcombe address. A copy of a real estate letter dated 13 September 2018, welcomes the parties to the current Lidcombe address. They also provided a copy of page 2, of a joint lease agreement for the current Lidcombe address. The agreement starts on 15 September 2018 and ends on 14 March 2019 and stated that the weekly rent is \$550. Other information includes a copy of the front

of a letter addressed to the applicant from NSW Transport Roads and Maritime Services and another document addressed to the sponsor. The parties provided consistent information about their housework. They stated that the sponsor did the cooking, washing and cleaning and the applicant took care of the cat. The parties provided inconsistent information about their household and this is discussed below:

27. The Tribunal put information to the applicant under s.359AA of the Act, as follows:

- The sponsor told the Tribunal two different and incorrect addresses for the first Lidcombe address. She stated that the parties lived at the first Lidcombe address with the applicant's brother and sister and many other 'stay mates' who moved in and out and a friend of the applicants brother stayed for a short time. This evidence was put to the applicant as it was inconsistent with his evidence that the parties initially lived at the first Lidcombe address with his friend and a classmate as tenants. Prior to his sister's arrival in early 2018, the tenants moved out and his sister moved in to live with the parties.

28. In a post hearing submission the sponsor stated the following: it is a shame she was unable to remember the addresses where she lived in Australia. She has difficulty remembering addresses and when she responded 'Skypoint Apt' it is because in Korea addresses usually end in '00 apartment, number'. She sought the assistance of her mother or the applicant when filling out addresses. Those who lived with the parties included the applicant's brother and friends. She spoke with the applicant and found out there were more than ten people moving in and out. The sponsor's mother stated the following: that the sponsor has difficulty in remembering the address where she lived in Perth and texted her mother when she needed to fill it in and she reminded the sponsor to learn the address. The applicant's brother stated the following: the sponsor moved in to live with the applicant in early 2015. At that time he was staying in the living room. In another room two university students lived and another flatmate. During their time living there many people moved in and out. At the Rhodes address he stayed in the living room and a friend of his and the applicant took one room with another person and the parties had the large room. Many people moved in and out and he can't remember how much they paid for the accommodation. He lived with the parties from 2015 to late 2018 in the city and Rhodes. Then they moved to Lidcombe until his younger sister came to Australia and then only family lived at this address. He stayed in the living room and his sister in another room and the parties in another room. He lives in the same building as the parties.

29. The Tribunal considered that the applicant told the Tribunal that the sponsor moved into the Sydney address in early 2015. This is inconsistent with the information provided in the visa application form where he stated that the parties began living together between October and November 2015. The parties gave inconsistent information about who lived with them at the first Lidcombe address. The sponsor was unable to provide a correct address for the first Lidcombe address where the parties claim to have lived. She was uncertain about the current Lidcombe address where the parties claim to live. Initially she provided the correct address and then stated that she couldn't remember the address. The Tribunal does not accept the argument that this is because the sponsor has difficulty remembering addresses because she did remember the current address where the parties claim to live but then discounted it by saying she couldn't remember the address. The Tribunal considered the applicant's brother's statement about the parties living arrangements. The Tribunal is of the view that his statement does not outweigh the inconsistent information the parties provided to the Tribunal. This inconsistent information led the Tribunal to have significant concerns about the parties' credibility and this is discussed in this decision record. The Tribunal does not accept that the parties have lived together as they claimed. Even though the parties gave consistent information about them sharing the responsibility of housework because of the

other inconsistent information provided by the parties, the Tribunal does not accept that the parties share the responsibility of housework.

30. Regarding the social aspect of the parties' relationship, the applicant told the Tribunal that since opening the café business, the parties invite their friends to the café. They like eating out together and go to church on Sundays. He stated that the parties travelled to the Gold Coast, Queensland, Australia, for a holiday and also travelled to Perth to visit the sponsor's mother. They provided a copy of their itinerary receipt, a Griffith university guest registration form and a car rental document. Air tickets issued in the parties' names are for travel to Sydney/ Perth. Previously the applicant stated that the parties visit social clubs together and have social membership cards in their respective names. In third party statutory declarations in 2016: Mr Jung, a friend of the parties stated that, he met the sponsor two years prior at university and the applicant one and a half years ago at work and introduced the parties to each other. Mr Moon, another friend of the parties stated that he had known the parties for one and a half years and lived near their place. He stated that the parties' family agreed to the parties' relationship. Letters dated August 2018 and April 2019 are from a worship pastor/event manager. He/she stated that the parties attend church each Sunday and are involved in and assist the community.
31. Other third party statements for 2019 have been provided without the identification of the authors and claim to be from: the applicant's brother. The author stated that he lived with the parties for many years and believes that the parties love each other. The statement has been provided without the identification of the author. Another statement claims to be from the applicant's parents with the applicant's father stating the following: he visited Australia in March 2019 and met his children and the sponsor. The applicant's mother visited Australia in 2017 and 2018 before setting up the café and stayed with his children and the sponsor. In August 2014, the applicant visited them in Korea and told them about the sponsor and that she would move in to live with him and they chatted with the sponsor via video. It is commendable that the applicant and sponsor support each other in running the café. He heard there were difficulties in the Tribunal hearing about financial details. The applicant is the type of person who takes responsibility on himself without causing concern to others. The applicant's mother observed the parties living together and they take care of each other. The sponsor's mother stating the following; she sometimes speaks with her daughter who told her of moving in with the applicant in 2015. The sponsor told her that although the applicant was younger than her he was responsible and independent for his age and the sponsor was seriously thinking of marrying him and preparing for a partner visa. She met the applicant in 2017 in Perth and again in 2018 when the applicant showed her around Sydney. Although she has not seen much of them living together but feels the parties love each other. Photographic evidence primarily depicts the parties together at different locations and at the café together and with others. The Tribunal is perplexed about the applicant's evidence at the Tribunal hearing that Mr Moon lived with the parties for a time and that the parties continued to see him for a time. Mr Moon's statements in March 2016, makes no reference to living with the parties. He stated that he lived near 'their place'. The Tribunal is of the view that collectively, the third party statements do not outweigh the inconsistent information the parties provided to the Tribunal. This inconsistent information led the Tribunal to have significant concerns about the parties' credibility and this is discussed in this decision record. The Tribunal accepts that the parties attend church together and plan and undertake joint social activities. It accepts that the parties represent themselves and are seen as partners.
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34. Regarding the nature of the parties' commitment to each other, at the time of application the applicant stated the following: the parties met in August 2014 and their de facto relationship began on 20 October 2015. The parties always discuss and plan for their future. They intend to marry when they have graduated from university. Their parents have been told about their plans and eventually accepted the parties' relationship which they are happy about as are the parties' friends. The applicant's migration agent stated that the parties intend to purchase a property and when they are ready have a couple of children. In April 2016, the parties registered their de facto relationship with the Registry of Births, Deaths and Marriages. The applicant told the Tribunal that the parties began living together in early 2015 and this is when their de facto relationship began. He then stated that he believed the parties' de facto relationship began when they lived at the first Lidcombe address, which is after the lodgement of the visa application in March 2016. The sponsor told the Tribunal that the applicant was struggling with visa matters and she wanted to help. She stated that he needed to finish university and is required to complete military duty in Korea and the parties would be separated for two years and the application for the partner visa was lodged. The parties told the Tribunal that they plan to marry either this year or next year. However they have not decided on a venue, but it would probably be in a church in Korea. They plan to pay off the loan from the applicant's parents and obtain a loan for a house and have three children.
35. The Tribunal asked the applicant why his parents and the sponsor's parents had not provided statements about the parties' relationship. The applicant told the Tribunal that his parents did not speak English and he didn't know how to go about providing their statements. He stated that statements had not been provided by the sponsor's parents because they were divorced. He claimed that he was concerned that the divorce record may have an effect on the review. The Tribunal invited the applicant to provide statements about the parties' relationship from his parents and the sponsor's parents. It advised the applicant on the appropriate procedure for providing statements from the applicant and sponsor's parents to the Tribunal including that they be provided with the identification of the authors. The applicant asked whether it was necessary to provide statements from both his parents. The Tribunal advised the applicant that the evidence he provided was at his discretion. The Tribunal provided the applicant with additional time to provide the statements.
36. In a post Tribunal hearing submission the applicant stated that the sponsor is dependent on him and the parties love each other. A copy of an Adult Passport application form was provided dated April 2016. This records the sponsor as the applicant for the passport and the applicant as her emergency contact. There is no evidence that this application has been lodged with the relevant authority.
37. The Tribunal considered that the parties claim to have been de facto partners since October 2015. The parties provided inconsistent information about aspects of their relationship. When consistent information is provided about aspects of a relationship, the Tribunal is provided with insight into the degree of companionship and support the parties draw from each other and whether the parties see their relationship as long term. In this case, the parties provided inconsistent information about their financial matters and about their living arrangements. They were unable to provide consistent information about their residential addresses. Notwithstanding, the evidence provided about the parties relationship, the Tribunal does not accept that they have lived together as they claimed or that they provide each other with companionship and support or that they see their relationship as long term.
38. On the basis of the above the Tribunal is not satisfied that the requirements of s.5CB(2) are met at the time the visa application was made or the time of this decision.
- 39.

40. **Other Considerations**

41. On 26 February 2019, the Tribunal wrote to the applicant and advised him that statements written by the applicants and third party statements are to be provided as statutory declarations and to be correctly witnessed and accompanied with identification documents for the authors. If the applicant or those writing third party statements do not write and understand the English language, statements are to be written in their own language. All documents that are not in English should be translated into English by a translator with a 'Translator' level accreditation from the National Accreditation Authority for Translators and Interpreters (NAATI). Both the documents and the translations should be provided. Translations provided by non-accredited translators outside of Australia should be endorsed by the translator with their full name, address, telephone number and details of their qualifications and experience in the language being translated.
42. During the Tribunal hearing the sponsor's responses to various questions put to her, were not related to what the Tribunal asked. The Tribunal asked the sponsor to respond to the question put to her and to keep her responses concise. At the end of the hearing the interpreter could not extend time to the Tribunal. At that time the Tribunal had not taken a statement from the applicant's brother. The Tribunal asked the applicant whether he would like the Tribunal to take his brother's statement with him speaking English, or would he rather provide a statement written by his brother and then have that statement translated and provided to the Tribunal. The applicant told the Tribunal that his brother would provide a written statement.
43. During the Tribunal hearing the applicant's migration agent interrupted Tribunal proceedings and challenged the interpreting. The Tribunal asked the migration agent to allow the Tribunal hearing to proceed naturally and bring any matter to the Tribunal's attention at the end of the Tribunal hearing. It told the migration agent that the Tribunal would continue to question the applicant until it was satisfied that he understood and responded to the specific question. When the Tribunal was taking evidence from the sponsor, the applicant's migration agent again interrupted the Tribunal hearing and challenged the interpreter. The Tribunal notes that the applicant also conversed with the Tribunal in English and clearly understood the questions put to him in English. It also notes that the sponsor also spoke and understood English.
44. At the Tribunal hearing the sponsor stated that she was nervous. The Tribunal accepts that the sponsor may have been nervous. Many people who appear before the Tribunal are anxious and nervous and provide consistent information to the Tribunal. The Tribunal does not accept that the inconsistent information provided to it by the parties was a result of the sponsor being nervous.
45. This decision is a synopsis of the evidence before the Tribunal. The Tribunal considered all the evidence individually and as a whole including the Department and Tribunal case files and the evidence pre-and post-hearing and at the Tribunal hearing. The parties provided inconsistent information about the financial aspects of their relationship and about their living arrangements. Overall, given the inconsistent evidence and credibility concerns, the Tribunal, is not prepared to accept the parties' evidence about their commitment to the relationship. The parties have not satisfied the Tribunal that at the time of application and this decision the parties have a mutual commitment to a shared life to the exclusion of all others, that they have a genuine and continuing relationship, or that they live together and not separately and apart on a permanent basis.

46. Therefore the applicant does not meet cl.820.211(a) and cl.820.221 of Schedule 2 to the Regulations.
47. There is no evidence that the applicant meets any of the alternate criteria for the grant of the visa.
48. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

49. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Helena Claringbold
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.09A De facto partner and de facto relationship

- (1) For subsection 5CB (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5CB (2) (a), (b), (c) and (d) of the Act exist.

Note 1 See regulation 2.03A for the prescribed criteria applicable to de facto partners.

Note 2 The effect of subsection 5CB (1) of the Act is that a person is the de facto partner of another person (whether of the same sex or a different sex) if the person is in a de facto relationship with the other person.

Subsection 5CB (2) sets out conditions about whether a de facto relationship exists, and subsection 5CB (3) permits *the* regulations to make arrangements in relation to the determination of whether 1 or more of those conditions exist.

- (2) If the Minister is considering an application for:
- (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being in a de facto relationship with each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).